"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी.2-22-छत्तीसगढ़ गजट / 38 सि. से. भिलाई, दिनांक 30-05-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2013-2015."

छत्तीसगढ़ राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 114] रायपुर, शुक्रवार, दिनांक 31 मार्च 2017 — चैत्र 10, शक 1939

विधि और विधायी कार्य विभाग
मंत्रालय, महानदी भवन, नया रायपुर

रायपुर, दिनांक 31 मार्च 2017

क्रमांक 3203/डी. 7/21-अ/प्रा./छ. ग./16.— भारत सरकार, विधि और न्याय मंत्रालय, विधायी विभाग के पत्र क्रमांक 2 (8)/ 16-Leg. I/ नई दिल्ली, दिनांक 22-12-2016 के अनुसरण में दि एनिमि प्रापर्टी (अमेंडमेन्ट एंड वेलीडेशन) फिफ्थ ऑर्डिनेंस, 2016 (क्रमांक 8 सन् 2016) एतद्द्वारा सर्वसाधारण की जानकारी हेतु पुन: प्रकाशित की जाती है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
व्ही. के. होता, अतिरिक्त सचिव.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 22nd December, 2016/Pausha 1, 1938 (Saka)

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION) FIFTH ORDINANCE, 2016
No. 8 OF 2016

Promulgated by the President in the Sixty-seventh Year of the Republic of India.

An Ordinance further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

WHEREAS the Enemy Property (Amendment and Validation) Ordinance, 2016 was promulgated by the President on the 7th day of January, 2016;

AND WHEREAS the Enemy Property (Amendment and Validation) Bill, 2016 to replace the Enemy Property (Amendment and Validation) Ordinance, 2016 has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS the Enemy Property (Amendment and Validation) Bill, 2016 was referred to the Select Committee of the Rajya Sabha for its examination and report;

AND WHEREAS in order to give continued effect to the Enemy Property (Amendment and Validation) Ordinance, 2016, the Enemy Property (Amendment and Validation) Second Ordinance was promulgated by the President on the 2nd day of April, 2016;

AND WHEREAS the Select Committee submitted its Report, along with the Enemy Property (Amendment and Validation) Bill, 2016 incorporating therein the amendments recommended by the said Committee, on the 6th day of May, 2016;

AND WHEREAS the Enemy Property (Amendment and Validation) Bill, 2016, as reported by the Select Committee, could not be taken up for consideration and passing in the Council of States;

AND WHEREAS the Enemy Property (Amendment and Validation) Third Ordinance, 2016 incorporating the recommendations of the Select Committee was promulgated by the President on the 31st day of May, 2016 and the Enemy Property (Amendment and Validation) Bill, 2016, as reported by the Select Committee could not be taken up for consideration and passing in the Council of States;

AND WHEREAS in order to give continued effect to the provisions of the Enemy Property (Amendment and Validation) Third Ordinance, 2016, along with the amendments as recommended by the Select Committee, the Enemy Property (Amendment and Validation) Fourth Ordinance, 2016 was promulgated by the President on the 28th day of August, 2016, which will cease to operate on the 27th day of December, 2016;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Enemy Property (Amendment and Validation) Fourth Ordinance, 2016 along with the amendments as recommended by the Select Committee;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. *(1)* This Ordinance may be called the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016.

(2) Save as otherwise provided, it shall be deemed to have come into force on the 7th day of January, 2016.

Amendment of section 2.

34 of 1968.

2. On and from the date of commencement of the Enemy Property Act, 1968 (hereinafter referred to as the principal Act), in section 2,—

(*i*) in clause (*b*),—

(*I*) for the words "an enemy subject", the words "an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality" shall be substituted and shall always be deemed to have been substituted;

(*II*) for the words "an enemy firm", the words "an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizens of India or citizens of a country which is not an enemy or such firm which has changed its nationality" shall be substituted and shall always be deemed to have been substituted;

(*III*) for the words "does not include a citizen of India", the words ' "does not include a citizen of India other than those citizens of India, being the legal heir and successor of the "enemy" or "enemy subject" or "enemy firm" ' shall be substituted and shall always be deemed to have been substituted;

(*IV*) the following *Explanations* shall be inserted and shall always be deemed to have been inserted at the end, namely:—

'*Explanation* 1.—For the purposes of this clause, the expression "does not include a citizen of India" shall exclude and shall always be deemed to have been excluded those citizens of India, who are or have been the

legal heir and successor of an "enemy" or an "enemy subject" or an "enemy firm" which or who has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy.

Explanation 2.— For the purposes of this clause, it is hereby clarified that nothing contained in this Act shall affect any right of the legal heir and successor referred to in this clause (not being inconsistent to the provisions of this Act) which have been conferred upon him under any other law for the time being in force.';

(*ii*) in clause (*c*), in the proviso,—

(*I*) after the words "dies in the territories to which this Act extends", the words "or dies in any territory outside India" shall be inserted and shall always be deemed to have been inserted;

(*II*) the following *Explanations* shall be inserted and shall always be deemed to have been inserted at the end, namely:—

'*Explanation* 1.— For the purposes of this clause, it is hereby clarified that "enemy property" shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an enemy property.

Explanation 2.— For the purposes of this clause, the expression "enemy property" shall mean and include and shall be deemed to have always meant and included all rights, titles and interests in, or any benefit arising out of, such property.'.

Amendment of section 5.

3. On and from the date of commencement of the principal Act, in section 5, after sub-section (*2*), the following shall be inserted, and shall always be deemed to have been inserted, namely:—

'(*3*) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death,

extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain, save as otherwise provided in this Act, vested in the Custodian.

Explanation.—For the purposes of this sub-section, "enemy property vested in the Custodian" shall include and shall always be deemed to have been included all rights, titles, and interests in, or any benefit arising out of, such property vested in him under this Act.'.

Insertion of new section 5A.

4. After section 5 of the principal Act, the following section shall be inserted, namely:—

Issue of certificate by Custodian.

"5A. The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.".

Insertion of new section 5B.

5. On and from the date of commencement of the principal Act, after section 5A [as inserted by section 4 of the Enemy Property (Amendment and Validation) Ordinance, 2016], the following shall be inserted and shall always be deemed to have been inserted, namely:—

Law of succession or any custom or usage not to apply to enemy property.

'5B. Nothing contained in any law for the time being in force relating to succession or any custom or usage governing succession of property shall apply in relation to the enemy property under this Act and no person (including his legal heir and successor) shall have any right and shall be deemed not to have any right (including all rights, titles and interests in, or any benefit arising out of, such property) in relation to such enemy property.

Explanation.— For the purposes of this section, the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in the matters of succession of property.'.

Amendment of section 6.

6. On and from the date of commencement of the principal Act, for section 6 of the principal Act, the following section shall be substituted and shall always be deemed to have been

substituted, namely:—

Prohibition to transfer any property vested in Custodian by an enemy, enemy subject or enemy firm.

"6. (*1*) No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void.

(*2*) Where any property vested in the Custodian under this Act had been transferred, before the commencement of the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, by an enemy or enemy subject or enemy firm and such transfer has been declared, by an order, made by the Central Government, to be void, and the property had been vested or deemed to have been vested in the Custodian [by virtue of the said order made under section 6, as it stood before its substitution by section 6 of the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016] such property shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, continue to vest or be deemed to have been vested in the Custodian and no person (including an enemy or enemy subject or enemy firm) shall have any right or be deemed to have any right (including all rights, titles and interests, or any benefit arising out of, such property) over the said property vested or deemed to have been vested in the Custodian.".

Amendment of section 8.

7. In section 8 of the principal Act,

(*i*) on and from the date of commencement of the principal Act, for sub-section (*1*), the following sub-section shall be substituted and shall always be deemed to have been substituted, namely:—

"(*1*) With respect to the property vested in the Custodian under this Act, the Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of this Act.";

(*ii*) in sub-section (2),—

(*a*) after clause (*i*), the following clause shall be

inserted, namely:-

"(*ia*) fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of the enemy property;";

(*b*) after clause (*iv*), the following clause shall be inserted, namely:—

"(*iva*) secure vacant possession of the enemy property by evicting the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any.".

Insertion of new section 8A.

8. After section 8 of the principal Act, the following section shall be inserted, namely:—

Sale of property by Custodian.

"8A.(*1*) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force, the Custodian may, within such time as may be specified by the Central Government in this behalf, dispose of whether by sale or otherwise, as the case may be, with prior approval of the Central Government, by general or special order, enemy properties vested in him immediately before the date of commencement of the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016 in accordance with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016.

(*2*) The Custodian may, for the purpose of disposal of enemy property under sub-section (*1*), make requisition of the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(*3*) The Custodian shall, on disposal of enemy property under sub-section (*1*) immediately deposit the sale proceeds into the Consolidated Fund of India and intimate details thereof to the Central Government.

(*4*) The Custodian shall send a report to the Central Government at such intervals, as it may specify, for the enemy properties disposed of under sub-section (*1*), containing such details (including the price for which such property has been sold and the particulars of the buyer to whom the properties have been sold or disposed of and the details of the proceeds of sale or disposal deposited into the

Consolidated Fund of India), as it may specify.

(*5*) The Central Government may, by general or special order, issue such directions to the Custodian on the matters relating to disposal of enemy property under sub-section (*1*) and such directions shall be binding upon the Custodian and the buyer of the enemy properties referred to in that sub-section and other persons connected to such sale or disposal.

(*6*) The Central Government may, by general or special order, make such guidelines for disposal of enemy property under sub-section (*1*).

(*7*) Notwithstanding anything contained in this section, the Central Government may direct that disposal of enemy property under sub-section (*1*) shall be made by any other authority or Ministry or Department instead of the Custodian and in that case all the provisions of this section shall apply to such authority or Ministry or Department in respect of disposal of enemy property under sub-section (*1*).

(*8*) Notwithstanding anything contained in sub-sections (*1*) to (*7*), the Central Government may deal with or utilise the enemy property in such manner as it may deem fit.".

Insertion of new section 10A.

9. After section 10 of the principal Act, the following section shall be inserted, namely:—

Power to issue certificate of sale.

"10A. (*1*) Where the Custodian proposes to sell any enemy immovable property vested in him, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of the ownership of such property by such person.

(*2*) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (*1*), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason.".

Amendment of section 11.

10. In section 11 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

5 of 1908.

"(*3*) The Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure,1908, while dealing with any case under this Act, in respect of the following matters, namely:—

(*a*) requiring the discovery and inspection of documents;

(*b*) enforcing the attendance of any person, including any officer dealing with land, revenue and registration matters, banking officer or officer of a company and examining him on oath;

(*c*) compelling the production of books, documents and other records; and

(*d*) issuing commissions for the examination of witnesses or documents.".

Amendment of section 17.

11. In section 17 of the principal Act, in sub-section (1), for the words "two per centum", at both the places where they occur, the words "five per centum" shall be substituted.

Substitution of new section for section 18.

12. For section 18 of the principal Act, the following section shall be substituted, namely:—

Transfer of property vested as enemy property in certain cases.

"18. The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.".

Insertion of new section18A.

13. On and from the date of commencement of the principal Act, after section 18 [as substituted by section 12 of the Enemy Property (Amendment and Validation) Ordinance, 2016], the following section shall be inserted and shall always be deemed to have been inserted, namely:—

Income not liable to be returned.

"18A. Any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been transferred by way of sale under section 8A or section 18, as the case may be, to any other person, be returned or liable to be returned to such person or any other person.".

Insertion of new sections 18B and 18C.

14. After section 18A of the principal Act [as so inserted by section 13 of the Enemy Property (Amendment and Validation) Ordinance, 2016], the following sections shall be inserted, namely:—

Ord. 1 of 2016.

Exclusion of jurisdiction of civil courts.

'18B. Save as otherwise provided in this Act, no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any property, subject matter of this Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, or any action taken by the Central Government or the Custodian in this regard.

Appeal to High Court.

18C. Any person aggrieved by an order of the Central Government under section 18 of this Act, may, within a period of sixty days from the date of communication or receipt of the order, file an appeal to the High Court on any question of fact or law arising out of such orders, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—In this section, "High Court" means the High Court of a State or Union territory in which the property referred to in section 18 is situated.'.

Amendment of section 20.

15. In section 20 of the principal Act, for the words "five hundred rupees" at both the places where they occur, the words "ten thousand rupees" shall be substituted.

16. On and from the date of commencement of the principal Act, in section 22 of the principal Act, after the words "for the time being in force", the brackets and words "(including any law of succession or any custom or usage in relation to succession of property)" shall be inserted and shall always be deemed to have been inserted.

Amendment of section 22.

17. After section 22 of the principal Act, the following section shall be inserted and shall always be deemed to have been inserted with effect from the 2nd July, 2010, namely:-

Insertion of new section 22A.

"22A. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

Validation.

(*a*) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Ordinance, had been in force at all material times;

(*b*) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Ordinance, were in force at all material times;

(*c*) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Ordinance, as if the said section, as amended by the aforesaid Ordinance was in force at all material times;

(*d*) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act.".

Amendment of section 23.

18. In section 23 of the principal Act, in sub-section (*2*), clause (*d*) shall be omitted.

Power to remove difficulties.

19. (*1*) If any difficulty arises in giving effect to the provisions of the principal Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, the Central Government may, by an order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, as may appear to be necessary for removing the difficulty:

40 of 1971.

Provided that no such order shall be made under this section after the expiry of two years from the date on which the Bill replacing the Enemy Property (Amendment and Validation) Fifth Ordinance, 2016, receives the assent of the President.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendment of sections 2 and 3 of Act 40 of 1971.

20. In the Public Premises (Eviction of Unauthorised Occupants) Act,1971,—

(*a*) in section 2, in clause (*e*), after sub-clause (*3*), the following sub-clause shall be inserted, namely:—

"(*4*) any premises of the enemy property as defined in clause (*c*) of section 2 of the Enemy Property Act, 1968.";

34 of 1968.

(*b*) in section 3, in clause (*a*),—

(*i*) in the second proviso, the word "and" shall be omitted;

(*ii*) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (*4*) of clause (*e*) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968.".

34 of 1968.

Savings.

Ord. 4 of 2010.
34 of 1968.
40 of 1971.

21. Notwithstanding the cessation of the operation of the Enemy Property (Amendment and Validation) Ordinance, 2010, anything done or any action taken under the Enemy Property Act, 1968, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, as if the provisions of those Acts, as amended by the said Ordinance had been in force at all material times.

Repeal and savings.

Ord. 7 of 2016.

22. *(1)* The Enemy Property (Amendment and Validation) Fourth Ordinance, 2016 is hereby repealed.

34 of 1968.

(2) Notwithstanding such repeal, anything done or any action taken under the Enemy Property Act, 1968 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act, as amended by this Ordinance.

PRANAB MUKHERJEE,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय मुद्रणालय, रायपुर से मुद्रित तथा प्रकाशित - 2017.